

Introduced by Senator Figueroa

February 20, 2002

An act to amend and repeal Section 1347 of the Penal Code, relating to child witnesses.

LEGISLATIVE COUNSEL'S DIGEST

SB 1559, as introduced, Figueroa. Child witness: closed circuit television.

Existing law authorizes a minor under the age of 13 years, to give testimony by way of a closed-circuit television under specified circumstances and procedures if the minor's testimony will involve a recitation of the facts under either of 2 circumstances: (1) an alleged sexual offense committed on or with that minor; or (2) the minor is a victim of a violent felony as defined. The currently operative version of the statute is operative until January 1, 2003, and on that date is repealed. Effective January 1, 2003, the version of the statute to become operative would only apply under the first circumstance.

This bill would extend indefinitely the operation of the currently operative version of the statute, thereby authorizing a minor to give testimony under either of the 2 circumstances described above. The bill would also repeal the version of the statute to become operative.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1347 of the Penal Code, as amended by
- 2 Section 1 of Chapter 207 of the Statutes of 2000, is amended to
- 3 read:

1 1347. (a) It is the intent of the Legislature in enacting this
2 section to provide the court with discretion to employ unusual
3 court procedures to protect the rights of a child witness, the rights
4 of the defendant, and the integrity of the judicial process. In
5 exercising its discretion, the court necessarily will be required to
6 balance the rights of the defendant or defendants against the need
7 to protect a child witness and to preserve the integrity of the court's
8 truthfinding function. This discretion is intended to be used
9 selectively when the facts and circumstances in the individual case
10 present compelling evidence of the need to use these unusual
11 procedures.

12 (b) Notwithstanding any other law, the court in any criminal
13 proceeding, upon written notice by the prosecutor made at least
14 three days prior to the date of the preliminary hearing or trial date
15 on which the testimony of the minor is scheduled, or during the
16 course of the proceeding on the court's own motion, may order that
17 the testimony of a minor 13 years of age or younger at the time of
18 the motion be taken by contemporaneous examination and
19 cross-examination in another place and out of the presence of the
20 judge, jury, defendant or defendants, and attorneys, and
21 communicated to the courtroom by means of closed-circuit
22 television, if the court makes all of the following findings:

23 (1) The minor's testimony will involve a recitation of the facts
24 of either of the following:

25 (A) An alleged sexual offense committed on or with the minor.

26 (B) The minor is a victim of a violent felony, as defined in
27 subdivision (c) of Section 667.5.

28 (2) The impact on the minor of one or more of the factors
29 enumerated in subparagraphs (A) to (D), inclusive, is shown by
30 clear and convincing evidence to be so substantial as to make the
31 minor unavailable as a witness unless closed-circuit television is
32 used.

33 (A) Threats of serious bodily injury to be inflicted on the minor
34 or a family member, of incarceration or deportation of the minor
35 or a family member, or of removal of the minor from the family
36 or dissolution of the family, in order to prevent or dissuade the
37 minor from attending or giving testimony at any trial or court
38 proceeding, or to prevent the minor from reporting the alleged
39 sexual offense or from assisting in criminal prosecution.



1 (B) Use of a firearm or any other deadly weapon during the
2 commission of the crime.

3 (C) Infliction of great bodily injury upon the victim during the
4 commission of the crime.

5 (D) Conduct on the part of the defendant or defense counsel
6 during the hearing or trial that causes the minor to be unable to
7 continue his or her testimony.

8 In making the determination required by this section, the court
9 shall consider the age of the minor, the relationship between the
10 minor and the defendant or defendants, any handicap or disability
11 of the minor, and the nature of the acts charged. The minor's
12 refusal to testify shall not alone constitute sufficient evidence that
13 the special procedure described in this section is necessary to
14 obtain the minor's testimony.

15 (3) The equipment available for use of closed-circuit television
16 would accurately communicate the image and demeanor of the
17 minor to the judge, jury, defendant or defendants, and attorneys.

18 (c) If the court orders the use of closed-circuit television,
19 two-way closed-circuit television shall be used, except that if the
20 impact on the minor of one or more of the factors enumerated in
21 subparagraphs (A) to (D), inclusive, of paragraph (2) of
22 subdivision (b), is shown by clear and convincing evidence to be
23 so substantial as to make the minor unavailable as a witness even
24 if two-way closed-circuit television is used, one-way
25 closed-circuit television may be used. The prosecution shall give
26 the defendant or defendants at least 30 days written notice of the
27 prosecution's intent to seek the use of one-way closed-circuit
28 television, unless good cause is shown to the court why this 30-day
29 notice requirement should not apply.

30 (d) (1) The hearing on a motion brought pursuant to this
31 section shall be conducted out of the presence of the jury.

32 (2) Notwithstanding Section 804 of the Evidence Code or any
33 other law, the court, in determining the merits of the motion, shall
34 not compel the minor to testify at the hearing; nor shall the court
35 deny the motion on the ground that the minor has not testified.

36 (3) In determining whether the impact on an individual child of
37 one or more of the four factors enumerated in paragraph (2) of
38 subdivision (b) is so substantial that the minor is unavailable as a
39 witness unless two-way or one-way closed-circuit television is
40 used, the court may question the minor in chambers, or at some



1 other comfortable place other than the courtroom, on the record for
2 a reasonable period of time with the support person, the
3 prosecutor, and defense counsel present. The defendant or
4 defendants shall not be present. The court shall conduct the
5 questioning of the minor and shall not permit the prosecutor or
6 defense counsel to examine the minor. The prosecutor and defense
7 counsel shall be permitted to submit proposed questions to the
8 court prior to the session in chambers. Defense counsel shall be
9 afforded a reasonable opportunity to consult with the defendant or
10 defendants prior to the conclusion of the session in chambers.

11 (e) When the court orders the testimony of a minor to be taken
12 in another place outside of the courtroom, the court shall do all of
13 the following:

14 (1) Make a brief statement on the record, outside of the
15 presence of the jury, of the reasons in support of its order. While
16 the statement need not include traditional findings of fact, the
17 reasons shall be set forth with sufficient specificity to permit
18 meaningful review and to demonstrate that discretion was
19 exercised in a careful, reasonable, and equitable manner.

20 (2) Instruct the members of the jury that they are to draw no
21 inferences from the use of closed-circuit television as a means of
22 facilitating the testimony of the minor.

23 (3) Instruct respective counsel, outside of the presence of the
24 jury, that they are to make no comment during the course of the
25 trial on the use of closed-circuit television procedures.

26 (4) Instruct the support witness, outside of the presence of the
27 jury, that he or she is not to coach, cue, or in any way influence or
28 attempt to influence the testimony of the minor.

29 (5) Order that a complete record of the examination of the
30 minor, including the images and voices of all persons who in any
31 way participate in the examination, be made and preserved on
32 videotape in addition to being stenographically recorded. The
33 videotape shall be transmitted to the clerk of the court in which the
34 action is pending and shall be made available for viewing to the
35 prosecuting attorney, the defendant or defendants, and his or her
36 attorney during ordinary business hours. The videotape shall be
37 destroyed after five years have elapsed from the date of entry of
38 judgment. If an appeal is filed, the tape shall not be destroyed until
39 a final judgment on appeal has been ordered. Any videotape that
40 is taken pursuant to this section is subject to a protective order of



1 the court for the purpose of protecting the privacy of the witness.
2 This subdivision does not affect the provisions of subdivision (b)
3 of Section 868.7.

4 (f) When the court orders the testimony of a minor to be taken
5 in another place outside the courtroom, only the minor, a support
6 person designated pursuant to Section 868.5, a nonuniformed
7 bailiff, and, after consultation with the prosecution and the
8 defense, a representative appointed by the court, shall be
9 physically present for the testimony. A videotape shall record the
10 image of the minor and his or her testimony, and a separate
11 videotape shall record the image of the support person.

12 (g) When the court orders the testimony of a minor to be taken
13 in another place outside the courtroom, the minor shall be brought
14 into the judge's chambers prior to the taking of his or her testimony
15 to meet for a reasonable period of time with the judge, the
16 prosecutor, and defense counsel. A support person for the minor
17 shall also be present. This meeting shall be for the purpose of
18 explaining the court process to the child and to allow the attorneys
19 an opportunity to establish rapport with the child to facilitate later
20 questioning by closed-circuit television. No participant shall
21 discuss the defendant or defendants or any of the facts of the case
22 with the minor during this meeting.

23 (h) When the court orders the testimony of a minor to be taken
24 in another place outside the courtroom, nothing in this section
25 prohibits the court from ordering the minor to be brought into the
26 courtroom for a limited purpose, including the identification of the
27 defendant or defendants as the court deems necessary.

28 (i) The examination shall be under oath, and the defendant or
29 defendants shall be able to see and hear the minor witness and if
30 two-way closed-circuit television is used, the defendant's image
31 shall be transmitted live to the witness.

32 (j) Nothing in this section affects the disqualification of
33 witnesses pursuant to Section 701 of the Evidence Code.

34 (k) The cost of examination by contemporaneous
35 closed-circuit television ordered pursuant to this section shall be
36 borne by the court out of its existing budget.

37 ~~(l) The Judicial Council shall prepare and submit to the~~
38 ~~Legislature, on or before December 31, 2000, a report on the~~
39 ~~frequency of use and effectiveness of closed-circuit testimony.~~



1 ~~(m) This section shall remain in effect only until January 1,~~
2 ~~2003, and as of that date is repealed, unless a later enacted statute,~~
3 ~~that is enacted before January 1, 2003, deletes or extends that date.~~

4 SEC. 2. Section 1347 of the Penal Code, as amended by
5 Section 2 of Chapter 207 of the Statutes of 2000, is repealed.

6 ~~1347.—(a) It is the intent of the Legislature in enacting this~~
7 ~~section to provide the court with discretion to employ unusual~~
8 ~~court procedures to protect the rights of a child witness, the rights~~
9 ~~of the defendant, and the integrity of the judicial process. In~~
10 ~~exercising its discretion, the court necessarily will be required to~~
11 ~~balance the rights of the defendant or defendants against the need~~
12 ~~to protect a child witness and to preserve the integrity of the court's~~
13 ~~truthfinding function. This discretion is intended to be used~~
14 ~~selectively when the facts and circumstances in the individual case~~
15 ~~present compelling evidence of the need to use these unusual~~
16 ~~procedures.~~

17 ~~(b) Notwithstanding any other law, the court in any criminal~~
18 ~~proceeding, upon written notice by the prosecutor made at least~~
19 ~~three days prior to the date of the preliminary hearing or trial date~~
20 ~~on which the testimony of the minor is scheduled, or during the~~
21 ~~course of the proceeding on the court's own motion, may order that~~
22 ~~the testimony of a minor 13 years of age or younger at the time of~~
23 ~~the motion be taken by contemporaneous examination and~~
24 ~~cross-examination in another place and out of the presence of the~~
25 ~~judge, jury, defendant or defendants, and attorneys, and~~
26 ~~communicated to the courtroom by means of closed circuit~~
27 ~~television, if the court makes all of the following findings:~~

28 ~~(1) The minor's testimony will involve a recitation of the facts~~
29 ~~of an alleged sexual offense committed on or with the minor.~~

30 ~~(2) The impact on the minor of one or more of the factors~~
31 ~~enumerated in subparagraphs (A) to (D), inclusive, is shown by~~
32 ~~clear and convincing evidence to be so substantial as to make the~~
33 ~~minor unavailable as a witness unless closed circuit television is~~
34 ~~used.~~

35 ~~(A) Threats of serious bodily injury to be inflicted on the minor~~
36 ~~or a family member, of incarceration or deportation of the minor~~
37 ~~or a family member, or of removal of the minor from the family~~
38 ~~or dissolution of the family, in order to prevent or dissuade the~~
39 ~~minor from attending or giving testimony at any trial or court~~



1 ~~proceeding, or to prevent the minor from reporting the alleged~~
2 ~~sexual offense or from assisting in criminal prosecution.~~

3 ~~(B) Use of a firearm or any other deadly weapon during the~~
4 ~~commission of the crime.~~

5 ~~(C) Infliction of great bodily injury upon the victim during the~~
6 ~~commission of the crime.~~

7 ~~(D) Conduct on the part of the defendant or defense counsel~~
8 ~~during the hearing or trial that causes the minor to be unable to~~
9 ~~continue his or her testimony.~~

10 In making the determination required by this section, the court
11 shall consider the age of the minor, the relationship between the
12 minor and the defendant or defendants, any handicap or disability
13 of the minor, and the nature of the acts charged. The minor's
14 refusal to testify shall not alone constitute sufficient evidence that
15 the special procedure described in this section is necessary to
16 obtain the minor's testimony.

17 (3) ~~The equipment available for use of closed-circuit television~~
18 ~~would accurately communicate the image and demeanor of the~~
19 ~~minor to the judge, jury, defendant or defendants, and attorneys.~~

20 (c) ~~If the court orders the use of closed-circuit television,~~
21 ~~two-way closed-circuit television shall be used, except that if the~~
22 ~~impact on the minor of one or more of the factors enumerated in~~
23 ~~subparagraphs (A) to (D), inclusive, of paragraph (2) of~~
24 ~~subdivision (b), is shown by clear and convincing evidence to be~~
25 ~~so substantial as to make the minor unavailable as a witness even~~
26 ~~if two-way closed-circuit television is used, one-way~~
27 ~~closed-circuit television may be used. The prosecution shall give~~
28 ~~the defendant or defendants at least 30 days' written notice of the~~
29 ~~prosecution's intent to seek the use of one-way closed-circuit~~
30 ~~television, unless good cause is shown to the court why this 30-day~~
31 ~~notice requirement should not apply.~~

32 (d) (1) ~~The hearing on a motion brought pursuant to this~~
33 ~~section shall be conducted out of the presence of the jury.~~

34 (2) ~~Notwithstanding Section 804 of the Evidence Code or any~~
35 ~~other law, the court, in determining the merits of the motion, shall~~
36 ~~not compel the minor to testify at the hearing; nor shall the court~~
37 ~~deny the motion on the ground that the minor has not testified.~~

38 (3) ~~In determining whether the impact on an individual child of~~
39 ~~one or more of the four factors enumerated in paragraph (2) of~~
40 ~~subdivision (b) is so substantial that the minor is unavailable as a~~



1 ~~witness unless two-way or one-way closed-circuit television is~~
2 ~~used, the court may question the minor in chambers, or at some~~
3 ~~other comfortable place other than the courtroom, on the record for~~
4 ~~a reasonable period of time with the support person, the~~
5 ~~prosecutor, and defense counsel present. The defendant or~~
6 ~~defendants shall not be present. The court shall conduct the~~
7 ~~questioning of the minor and shall not permit the prosecutor or~~
8 ~~defense counsel to examine the minor. The prosecutor and defense~~
9 ~~counsel shall be permitted to submit proposed questions to the~~
10 ~~court prior to the session in chambers. Defense counsel shall be~~
11 ~~afforded a reasonable opportunity to consult with the defendant or~~
12 ~~defendants prior to the conclusion of the session in chambers.~~

13 ~~(c) When the court orders the testimony of a minor to be taken~~
14 ~~in another place outside of the courtroom, the court shall do all of~~
15 ~~the following:~~

16 ~~(1) Make a brief statement on the record, outside of the~~
17 ~~presence of the jury, of the reasons in support of its order. While~~
18 ~~the statement need not include traditional findings of fact, the~~
19 ~~reasons shall be set forth with sufficient specificity to permit~~
20 ~~meaningful review and to demonstrate that discretion was~~
21 ~~exercised in a careful, reasonable, and equitable manner.~~

22 ~~(2) Instruct the members of the jury that they are to draw no~~
23 ~~inferences from the use of closed-circuit television as a means of~~
24 ~~facilitating the testimony of the minor.~~

25 ~~(3) Instruct respective counsel, outside of the presence of the~~
26 ~~jury, that they are to make no comment during the course of the~~
27 ~~trial on the use of closed-circuit television procedures.~~

28 ~~(4) Instruct the support witness, outside of the presence of the~~
29 ~~jury, that he or she is not to coach, cue, or in any way influence or~~
30 ~~attempt to influence the testimony of the minor.~~

31 ~~(5) Order that a complete record of the examination of the~~
32 ~~minor, including the images and voices of all persons who in any~~
33 ~~way participate in the examination, be made and preserved on~~
34 ~~videotape in addition to being stenographically recorded. The~~
35 ~~videotape shall be transmitted to the clerk of the court in which the~~
36 ~~action is pending and shall be made available for viewing to the~~
37 ~~prosecuting attorney, the defendant or defendants, and his or her~~
38 ~~attorney during ordinary business hours. The videotape shall be~~
39 ~~destroyed after five years have elapsed from the date of entry of~~
40 ~~judgment. If an appeal is filed, the tape shall not be destroyed until~~



1 a final judgment on appeal has been ordered. Any videotape that
2 is taken pursuant to this section is subject to a protective order of
3 the court for the purpose of protecting the privacy of the witness.
4 This subdivision does not affect subdivision (b) of Section 868.7.

5 ~~(f) When the court orders the testimony of a minor to be taken
6 in another place outside the courtroom, only the minor, a support
7 person designated pursuant to Section 868.5, a nonuniformed
8 bailiff, and, after consultation with the prosecution and the
9 defense, a representative appointed by the court, shall be
10 physically present for the testimony. A videotape shall record the
11 image of the minor and his or her testimony, and a separate
12 videotape shall record the image of the support person.~~

13 ~~(g) When the court orders the testimony of a minor to be taken
14 in another place outside the courtroom, the minor shall be brought
15 into the judge's chambers prior to the taking of his or her testimony
16 to meet for a reasonable period of time with the judge, the
17 prosecutor, and defense counsel. A support person for the minor
18 shall also be present. This meeting shall be for the purpose of
19 explaining the court process to the child and to allow the attorneys
20 an opportunity to establish rapport with the child to facilitate later
21 questioning by closed-circuit television. No participant shall
22 discuss the defendant or defendants or any of the facts of the case
23 with the minor during this meeting.~~

24 ~~(h) When the court orders the testimony of a minor to be taken
25 in another place outside the courtroom, nothing in this section
26 prohibits the court from ordering the minor to be brought into the
27 courtroom for a limited purpose, including the identification of the
28 defendant or defendants as the court deems necessary.~~

29 ~~(i) The examination shall be under oath, and the defendant or
30 defendants shall be able to see and hear the minor witness, and if
31 two-way closed-circuit television is used, the defendant's image
32 shall be transmitted live to the witness.~~

33 ~~(j) Nothing in this section affects the disqualification of
34 witnesses pursuant to Section 701 of the Evidence Code.~~

35 ~~(k) The cost of examination by contemporaneous
36 closed-circuit television ordered pursuant to this section shall be
37 borne by the court out of its existing budget.~~

38 ~~(l) This section shall become operative on January 1, 2003.~~

O

